



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 17, 1996

Mr. Mark T. Sokolow
City Attorney
City of League City
300 West Walker
League City, Texas 77573-3898

OR96-0564

Dear Mr. Sokolow:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37675.

The City of League City (the "city") received an open records request from an attorney for all of the city police department records pertaining to the requestor's client. You contend the requested records may be withheld in their entirety pursuant to sections 552.103 and 552.108 of the Government Code.

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

In *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court of civil appeals established the guidelines on what constitutes public information contained in police files. The court's holding was summarized in Open Records Decision No. 127 (1976), which concluded that "front page" offense report information, which includes the names of all arresting officers, is public information. For

your convenience we have attached a summary of Open Records Decision No. 127 (1976) to the end of this ruling. None of the information listed as being "public" under Open Records Decision No. 127 (1976) may be withheld under either section 552.108 or 552.103. See Open Records Decision No. 597 (1991).

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). Traditionally when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. In cases that are still under active investigation, this section exempts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-466 (1982); Open Records Decision Nos. 444 (1986), 434 (1986). Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

In this instance you did not inform this office whether any criminal charges are currently pending against the requestor's client. We therefore conclude that you have not met your burden in establishing that the release of the requested information would unduly interfere with law enforcement efforts at this time. Accordingly, the city may not withhold any of the requested information pursuant to section 552.108.

You contend that the "litigation" exception, section 552.103 of the Government Code, exempts the requested information because the requestor has threatened civil litigation against the city in connection with the arrest and subsequent treatment of his client. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In his letter to the city, the requestor states that

I have been retained by Paul Gennusa to handle a claim and possibly file a lawsuit against the City of League City and or the League City Police Department as a result of conduct of the police department

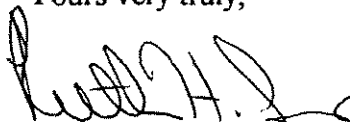
and its officers It is my client's position that the policies and procedures of the League City Police Department along with the negligence of the individual officers and personnel involved, proximately caused my client's injuries. . . . Because the full extent of my client's damages are unknown at this time, it is not possible for me to make a monetary demand. Upon further investigation of both the liability and damages facts in this matter, I will be in a better position to make a demand.

The requestor's language clearly indicates that litigation against the city is reasonably anticipated. We therefore conclude that section 552.103 applies in this instance.

We note, however, that to the extent the information in the records at issue has previously been made available to the requestor's client, that information may not now be withheld from the requestor pursuant to section 552.103: absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). It is apparent to this office that at least one of the documents you submitted to this office has been previously viewed by the requestor's client because it bears his signature. This record, and any other document to which the requestor's client had prior access may not be withheld under section 552.103 and therefore must be released by the city. However, all remaining information may be withheld pursuant to section 552.103, except for those categories of information specifically held to be public in *Houston Chronicle*.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 37675

Enclosures: Submitted documents

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(w/o enclosures)